

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MARK JOHN BUDETICH,

Plaintiff,

vs.

AARGON COLLECTION AGENCY, *et al.*,

Defendants.

Case No. 2:09-cv-00232-RCJ-GWF

**FINDINGS AND  
RECOMMENDATIONS**

On February 4, 2009, Plaintiff filed a Civil Rights Complaint pursuant to 42 U.S.C. § 1983 (Dkt. #1), alleging that Defendants committed the tort of replevin by retaining possession of Plaintiff's clothing and requesting compensatory damages as a remedy. The Court issued an order on February 19, 2009 stating that Plaintiff had failed to pay the appropriate filing fee, file an application to proceed *in forma pauperis* or make a proper showing that he does not have to pay the filing fee pursuant to 28 U.S.C. § 1916. (Dkt. #5). Furthermore, the Court notified Plaintiff that failure to pay the fee or demonstrate that he did not have to pay the filing fee within thirty (30) days of the order would result in the recommendation that this action be dismissed with prejudice. (*Id.*)

Plaintiff filed an Amended Complaint on March 19, 2009 (Dkt. #6), alleging that he was not required to pay the filing fee of \$350.00 as Congress had waived Plaintiff's costs and fees under the Seaman's statute, 28 U.S.C. § 1916. On April 10, 2009, Plaintiff filed a motion (Dkt. #7) requesting that the U.S. Marshals effect service of his Amended Complaint on Defendants, which the Court denied on April 20, 2009 (Dkt. #10). The Court also ruled that Congress' waiver of costs and fees under the Seaman's statute, 28 U.S.C. § 1916, did not apply in this instance and that Plaintiff had to either pay the appropriate filing fee or file an application to proceed *in forma pauperis*. (Dkt. #10) The Court

1 notified Plaintiff that failure to pay the filing fee or file an application to proceed *in forma pauperis* by  
2 May 20, 2009 would result in a recommendation that this action be dismissed with prejudice. (*Id.*) To  
3 date, Plaintiff has failed to pay the filing fee or file an application to proceed *in forma pauperis* and the  
4 time allowed has expired. As a result, the Court will recommend that this action be dismissed with  
5 prejudice. Accordingly,

6 **IT IS HEREBY RECOMMENDED** that Plaintiff's Amended Complaint (Dkt. #6) should be  
7 **DISMISSED with prejudice** based on Plaintiff's failure to pay the complaint filing fee or file an  
8 application to proceed *in forma pauperis* within the time allotted by the Court.

9 **NOTICE**

10 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in  
11 writing and filed with the Clerk of the Court within ten (10) days. The Supreme Court has held that the  
12 courts of appeal may determine that an appeal has been waived due to the failure to file objections  
13 within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1)  
14 failure to file objections within the specified time and (2) failure to properly address and brief the  
15 objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues  
16 from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*  
17 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

18 DATED this 13th day of July, 2008.

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21 **GEORGE FOLEY, JR.**  
22 **UNITED STATES MAGISTRATE JUDGE**  
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